

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NATIONAL OILWELL VARCO, L.P.

Plaintiff,

vs.

JULIO GARZA,

Defendant.

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Civil Action No. 4:22-CV-02006

FACTS IN SUPPORT OF MOTION FOR FORENSIC EXAM

Since the preliminary injunction hearing on June 29th the following facts have been established which are highly relevant to Varco's motion for forensic examination:

1. Before surrendering any of the USB devices to Array Technology's counsel, Mr. Garza downloaded some of the information from one of the USB devices onto the Array company laptop at issue here.¹
2. Mr. Garza had possession of Varco's information at least a month before surrendering any of the USB devices to Array's counsel.²
3. Mr. Garza plugged "one or two" USB devices that he took with him from Varco into his Array Technologies laptop, including the one which he admits contained the Varco data discussed below.³
4. Mr. Garza "may have used" the USB devices and iPhone at issue herein while working for Array.⁴

¹ See **Exhibit A**, Mr. Garza's July 9, 2022, deposition excerpts at pages 46:24 to 47:9, attached. See also **Exhibit A**, page 97:3-23.

² Mr. Garza resigned from Varco on April 21st or 22nd, and on information and belief did not tender the USB devices to Array's counsel until June 4, 2022.

³ See **Exhibit A**, Mr. Garza's deposition excerpts at pages 46:24 to 47:9, attached. See **Exhibit B**, Julio Garza's Response to Plaintiff's First Interrogatories, response to interrogatory 7, attached.

⁴ See **Exhibit C**, Julio Garza's Response to Plaintiff's Second Interrogatories, response to interrogatory 11, attached.

5. Mr. Garza did not have permission to take the information in question from Varco when he left.⁵
6. Mr. Garza began interviewing at Array Technologies a couple of weeks before April 19th.⁶
7. Mr. Garza was loading files onto the USB device up to the day he resigned from Varco.⁷
8. Mr. Garza downloaded 109 of Varco's files onto the USB device in April 2022.⁸
9. On April 19, 2022, Garza completed his interviews with Array Technologies.⁹
10. Between April 13th and April 22, 2022, Mr. Garza downloaded most of the Varco documents.¹⁰
11. By April 19th Mr. Garza had completed his interviews at Array, and on April 21, 2022, Array Technologies made a verbal offer of employment to Mr. Garza.¹¹
12. On April 22, 2022, Array Technologies Inc. formally offered Mr. Garza a job.¹² That same day, Mr. Garza downloaded a Varco file called Task Summary Outcome,¹³ and presented his letter of resignation to Varco.¹⁴
13. While not all 109 documents are confidential, Mr. Garza has admitted that some of the files he took are confidential.¹⁵
14. When Mr. Garza began working for Array Technologies he plugged one or two USB devices that he used to download Varco's information into his Array Technologies issued laptop.¹⁶

⁵ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at pages 48:23 to 49:1, attached.

⁶ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 29:19-23, attached.

⁷ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at pages 41:10-42:3, and 43:25-44:3, attached.

⁸ See **Exhibit D**, the June 29, 2022 Preliminary Injunction Hearing Transcript at page 25:3-10, attached.

⁹ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 29:19-23, attached.

¹⁰ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 39:10-17, attached.

¹¹ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 43:11-44:3, attached.

¹² See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 43:17-19, attached.

¹³ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at pages 92:23 to 93:10, attached.

¹⁴ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 42:21, attached.

¹⁵ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 45:1-6, attached.

¹⁶ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at pages 46:24-47:25, attached.

15. Mr. Garza would not deny downloading files from the USB device in question to his Array Technologies issued laptop.¹⁷

16. To date, Varco has not been able to examine any of the USB or other electronic devices and Varco has not been able to examine the Array Technologies laptop computer.

17. Examining the Array laptop will show:

- a. What was downloaded from the USB drives to the laptop,¹⁸
- b. Whether any of the file names were changed in a way that might evade any name search,¹⁹ and
- c. *Most importantly*, whether the downloads to the laptop were placed in files that have only ever resided on the laptop, or instead were placed in files that are shared on the Cloud with other Array computers.

VARCO'S CANDID PROCEDURAL ADMISSIONS

18. Negotiations with counsel for Mr. Garza have been amicable and professional. Any lasting disagreements generated by Mr. Garza's counsel have been the result of reasonable concerns on her part.²⁰

¹⁷ See **Exhibit A**, Mr. Garza's July 9, 2022 deposition at page 97:3-23, attached.

¹⁸ Garza's expert Mr. Jared Trent has produced a list of the file names contained on one of the USB drives, attached as **Exhibit E**, confirming that Varco data was there. To date there has been no indication of what was done with the data.

¹⁹ Mr. Trent's list in Exhibit E is missing certain files that Varco knows were placed on the USB drive. See the highlighted file names on **Exhibit F**, the original list generated by Varco of the files originally downloaded by Mr. Garza. Exhibit F herein was previously an exhibit in the June 29, 2022, preliminary injunction hearing. So, between the time Varco established that 109 files were downloaded to the USB drive and the time Garza's expert Mr. Trent examined the USB drive, ten files disappeared from that drive or are now somehow unaccounted for.

²⁰ Among other things, Mr. Garza's counsel has requested that Varco amend its complaint in certain respects regarding damages, which Varco intends to agree to. A motion for leave to file a second amended complaint accommodating Mr. Garza's counsel's request will be forthcoming once the parties have conferred over a draft filing. Also, Garza and Varco counsel have had productive conversations over the terms of a forensic exam order, and the disagreements submitted to the court are based on reasonable concerns.

19. Recent negotiations with Mr. Jared Braithwaite, counsel for Array Technologies have suffered.²¹ In the last couple of weeks there has seldom been a discussion with Mr. Braithwaite in which he has not focused on his intention to seek sanctions against Varco and its counsel for one reason or another.²² This criticism does not apply to Array's counsel of record, Ms. Rachael Steely.

20. Varco's proposed order is designed to protect any privilege or commercial secrets that Mr. Garza or Array Technologies may have. Much of the detail and protocol in Varco's proposed order has been agreed between counsel for Varco and Garza.

21. I, Joshua A. Redelman, swear that the exhibits attached hereto are true and correct copies of the transcripts and documents in question.

Respectfully submitted,

STIBBS & CO., P.C.

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²¹ Mr. Braithwaite has not filed a Notice of Appearance, but he appears to be the attorney in charge for the non-party Array Technologies.

²² See eg. **Exhibit G**, the July 28, 2022 email from Mr. Jared Braithwaite and the email string included therewith, attached.

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of *Facts in Support of Motion for Forensic Exam* on counsel of record for all interested parties on July 31, 2022, through the ECF filing system, as follows:

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